

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:05 CV 479**

DODFORD LAW,)	
)	
Plaintiff,)	
)	
v.)	ORDER
)	
CONVERGYS)	
(ONSTAR-SITEL-CONVERGYS,)	
)	
Defendant.)	
_____)	

THIS MATTER IS BEFORE THE COURT *sua sponte*. On January 8, 2007, the Court issued an Order (Document No. 36) instructing the Plaintiff “to file a response to “Defendant’s Motion to Dismiss...” (Document No. 34) and “Memorandum in Support...” (Document No. 35) on or before **January 22, 2007.**” The Court warned that failure to respond would “likely lead to sanctions including dismissal of the lawsuit.” The case summary set out in that January 8, 2007 Order is incorporated herein. The parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c), and this matter is ripe for disposition.

Having carefully considered all the pleadings (including the Court’s January 8, 2007 Order), the record, and applicable authority, the undersigned will deny Plaintiff’s “Motion to Complaint” (Document No. 33) and will grant “Defendant’s Motion to Dismiss” (Document No. 34). The undersigned finds that despite multiple extensions and a clear warning of this consequence, the Plaintiff has failed to prosecute his lawsuit. The Plaintiff has failed to file any motions or briefs with this Court since October 27, 2006. As stated in its previous Order, the Court believes the law supports dismissal:

Federal Rule of Civil Procedure 37(b)(2) states:

If a party ... fails to obey an order to provide or permit discovery ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others ... dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

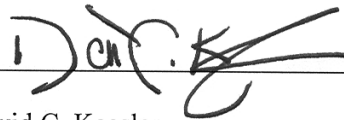
In addition, Federal Rule of Civil Procedure 41(b) allows:

For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant ... a dismissal under this subdivision ... operates as an adjudication on the merits.

IT IS, THEREFORE, ORDERED that “Defendant’s Motion to Dismiss...” (Document No. 34) is **GRANTED** and Plaintiff’s “Motion to Complaint” (Document No. 33) is **DENIED**. The Court in its discretion will deny the request of the Defendant for costs and attorney fees.

SO ORDERED.

Signed: January 31, 2007



David C. Keesler
United States Magistrate Judge

